

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD\*  
CHARLES T. KAPPLER  
JOHN H. DOYLE\*  
JAMES C. MARTIN, JR.\*

\*ALSO ADMITTED IN NEW YORK  
\*ALSO ADMITTED IN MARYLAND

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June 10, 1991

17366  
JUN 10 1991 - 2 30 PM

*\$15*  
*New Number*

1-161A050

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are three (3) fully executed and acknowledged copies of a Borrower's Security Agreement dated April 2, 1991, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

The names and addresses of the parties to the enclosed document are:

Secured Party: First Bank North, National Association  
130 West Superior Street  
Duluth, Minnesota 55802

Borrower: E J Railroad, Inc., dba North Shore  
Scenic Railroad  
506 W. Michigan Street  
Duluth, Minnesota 55802

A description of the railroad equipment covered by the enclosed document is set forth in Exhibit A attached hereto and made a part hereof.

Also enclosed is a check in the amount of \$15 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return two (2) stamped copies of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, 20006.

*Consent - C.T. Kappler*

Mr. Sidney L. Strickland, Jr.  
June 10, 1991  
Page Two

A short summary of the enclosed primary document to appear in the Commission's Index is:

Borrower's Security Agreement dated April 2, 1991 between E J Railroad, Inc., dba North Shore Scenic Railroad, Borrower, and First Bank North, National Association, Secured Party, covering all railroad equipment now owned or hereafter acquired, including but not limited to one General Electric Model GP7M Locomotive and five (5) Depowered Budd Coaches.

Very truly yours,

  
Charles T. Kappler

CTK/bg  
Enclosures

EXHIBIT A

All railroad equipment now owned or hereafter acquired including,  
but not limited to the following:

General Motors Model GP7M Diesel Locomotive - builder's Serial  
No. 6074-5

Depowered Budd Coach Model RDC-1 Amtrak #800511  
Depowered Budd Coach Model RDC-9 Amtrak #800506  
Depowered Budd Coach Model RDC-9 Amtrak #800507  
Depowered Budd Coach Model RDC-9 Amtrak #800508  
Depowered Budd Coach Model RDC-9 Amtrak #800509

**Interstate Commerce Commission**  
Washington, D.C. 20423

6/10/91

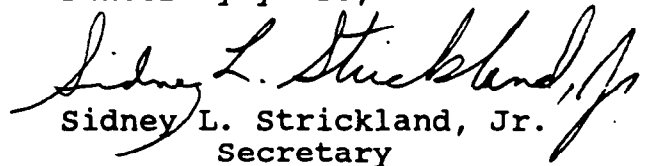
OFFICE OF THE SECRETARY

Charles T. Kappler  
Alvord & Alvord  
918 16th St. N.W.  
Washington, D.C. 20001

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/10/91 at 2:20pm, and assigned recordation number(s). 17366

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

## BORROWER'S SECURITY AGREEMENT

Borrower: <u>E J Railroad, Inc. dba North Shore</u> Address: <u>Scenic Railroad</u> <u>506 W. Michigan Street, Duluth, MN</u> Borrower _____ Address _____	Bank: <u>First Bank North, National Association</u> Address: <u>130 West Superior Street</u> <u>Duluth, MN 55802</u> <div style="text-align: right; font-weight: bold; font-size: 1.2em;">17366</div>
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**Security Interest.** This security interest secures (check one):

INTERSTATE COMMERCE COMMISSION

- ☒ the payment and performance of each and every debt, liability and obligation of every type and description which the Borrower may now or at any time owe to the Bank, whether now existing or hereafter arising, direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several, or joint and several; or
- ☐ the payment of a promissory note dated \_\_\_\_\_, 19 \_\_\_\_\_, executed and delivered by the Borrower to the Bank in the original principal sum of \$ \_\_\_\_\_, with interest and other charges as therein provided; or
- ☐ the payment of a \_\_\_\_\_ dated \_\_\_\_\_ 19 \_\_\_\_\_, executed and delivered by the Borrower to the Bank in the original principal sum of \$ \_\_\_\_\_, with interest and other charges as therein provided.

This security interest also secures all extensions, renewals and replacements of the above described obligations. Such obligations are hereinafter collectively referred to as the "Secured Obligations";

The Borrower grants the Bank a security interest in the following property (hereinafter the "Collateral"):

### Inventory

- ☐ All inventory (as the term is defined in the applicable Uniform Commercial Code) now owned or hereafter at any time acquired by Borrower or in which Borrower obtains rights; or
- ☐ Specific inventory, described as follows:

### Equipment

- ☒ All equipment (as the term is defined in the applicable Uniform Commercial Code) now owned or hereafter at any time acquired by Borrower or in which Borrower obtains rights; or
- ☐ Specific equipment, described as follows:
- All railroad equipment now owned or hereafter acquired including, but not limited to the following: General Motors Model GP7M Diesel Locomotive-builder's Ser.#6074-5
- Depowered Budd Coach Model RDC-1 Amtrak #800511
- Depowered Budd Coach Model RDC-9 Amtrak #800506
- Depowered Budd Coach Model RDC-9 Amtrak #800507
- Depowered Budd Coach Model RDC-9 Amtrak #800508
- Depowered Budd Coach Model RDC-9 Amtrak #800509

### Accounts, Instruments, Chattel Paper, and Other Rights to Payment

- ☐ Each and every right of Borrower to the payment of money, whether such right to payment now exists or hereafter arises, together with all other rights and interests (including all liens and security interests) which Borrower may at any time have by law or agreement against any account debtor (as defined in the applicable Uniform Commercial Code) or other obligor obligated to make any such payment or against any of the property of such account debtor or other obligor; or
- ☐ Specific accounts, instruments, chattel paper and other rights to payment, described as follows:

### General Intangibles

- ☐ All intangibles (as defined in the applicable Uniform Commercial Code) now owned or hereafter at any time acquired by Borrower; or
- ☐ Specific intangibles, described as follows:

The Collateral shall include (i) all substitutions and replacements for and proceeds of any and all of the foregoing property, and in the case of all tangible Collateral, all accessions, accessories, attachments, parts, equipment and repairs now or hereafter attached or affixed to or used in connection with any such goods and (ii) all warehouse receipts, bills of lading and other documents of title now or hereafter covering such goods.

Borrower warrants, represents and agrees that:

1. The Collateral ☒ will ☐ will not be acquired with the proceeds of the loan or advance made on or about the date hereof. If the Collateral will be so acquired, the Bank is authorized to disburse such proceeds directly to the seller(s) of the Collateral.

2. If part of the Collateral now constitutes, or as and when acquired by Borrower will constitute, Inventory and Equipment (as those terms are defined in the applicable Uniform Commercial Code) such collateral is or will be kept at the following location or locations:

and will not be removed from such location or locations unless, prior to any such removal, Borrower has given written notice to the Bank of the location or locations to which the Borrower desires to remove the same, and the Bank has given its written consent to such removal. If any of the locations where Borrower now or hereafter keeps the Collateral are leased by the Borrower, the Borrower shall at Bank's request, obtain a Landlord's waiver in a form satisfactory to Bank.

3. Borrower's place of business, or chief executive office if Borrower has more than one place of business, is located at \_\_\_\_\_

Borrower will notify the Bank in writing of any change in location of Borrower's place of business or chief executive office.

4. If any Collateral is or will become a fixture, the recorded owner of the real estate is \_\_\_\_\_ and the legal description of the real estate is \_\_\_\_\_

Borrower will not permit any tangible Collateral to become part of or to be affixed to any real property without first assuring to the reasonable satisfaction of the Bank that its security interest will be prior and senior to any interest or lien then held or thereafter acquired by any other party.

5. If any of the Collateral is goods of a type normally used in more than one state (whether or not actually so used), Borrower will contemporaneously herewith furnish the Bank a list of such Collateral showing the states wherein the same is or will be used, and such list will identify any Collateral covered by certificates of title and the issuing states thereof. Hereafter Borrower will notify the Bank in writing of any other states in which any of the Collateral is so used or which have issued certificates of title covering any of the Collateral.

6. Borrower has or will acquire title to and will at all times keep the Collateral free of all liens and encumbrances, except the security interest created hereby, and has full power and authority to execute this Security Agreement, to perform Borrower's obligations hereunder and to subject the Collateral to the security interest created hereby. Borrower will pay all fees, assessments, charges or taxes arising with respect to the Collateral. There is no encumbrance or security interest with respect to all or any part of the Collateral which either (i) is superior to the Bank's security interest hereunder, or (ii) has not been disclosed to the Bank by the Borrower. All costs of keeping the Collateral free of encumbrances and security interests prohibited by this Agreement and of removing same if they should arise shall be borne and paid by Borrower.

7. Each right to payment and each instrument, document, chattel paper and other agreement constituting or evidencing Collateral is (or will be when arising or issued) a valid, genuine and legally enforceable obligation, subject to no defense, set-off or counterclaim (other than those arising in the ordinary course of business) of the account debtor or other obligor named therein or in Borrower's records pertaining thereto as being obligated to pay such obligation. Borrower will not agree to any material modification, amendment or cancellation of any such obligation without Bank's prior written consent, and will not subordinate any such right to payment to claims of other creditors of such account debtor or other obligor.

8. Borrower will at any time or times hereafter execute such financing statements and other documents and instruments and perform such acts as the Bank may from time to time request to establish, maintain, perfect and enforce a valid security interest in the Collateral, and will pay all costs of filing and recording.

9. Borrower will keep all tangible Collateral and all lands, plants, buildings and other property now or hereafter owned or used in connection with its business in good condition, normal depreciation excepted, and insured against loss or damage by fire (including so-called extended coverage), theft, physical damage, and against such other risks, including without limitation public liability, in such amounts, in such companies and upon such terms as Bank may reasonably require. Borrower will obtain loss payable indorsements on applicable insurance policies in favor of Borrower and Bank as their interests may appear and at Bank's request will deposit the insurance policies with Bank. Borrower shall cause each insurer to agree, by Policy indorsement or by issuance of a certificate of insurance or by independent instrument furnished to Bank, that such insurer will give thirty (30) days written notice to Bank before such policy will be altered or cancelled. Borrower irrevocably appoints Bank as Borrower's attorney in fact to make any claim for, to negotiate settlement of claims, to receive payment for and to execute and endorse any documents, checks or other instruments in payment for loss, theft, or damage under any insurance policy covering the Collateral.

10. Borrower will promptly notify Bank of any loss or material damage to any Collateral or of any adverse change, known to Borrower, in the prospect of payment of any sums due on or under any instrument, chattel paper, account or general intangible constituting Collateral.

11. Upon Bank's request (whether a Default as hereinafter defined, has occurred) Borrower will promptly deliver to Bank any instrument, document or chattel paper constituting Collateral.

12. Upon Default by Borrower in performance of its obligations hereunder, Bank shall have the authority, but shall not be obligated to: (i) effect such insurance and necessary repairs and pay the premiums therefor and the costs thereof; and (ii) pay and discharge any fees, assessments, charges, taxes, liens and encumbrances on the Collateral. All sums so advanced or paid by the Bank shall be payable by Borrower on demand with interest at the maximum rate allowed by law and shall be a part of the Secured Obligations.

13. Borrower will not sell, lease or otherwise dispose of the Collateral other than in the ordinary course of its business at prices constituting the then fair market value thereof.

14. The Bank shall have the authority (whether or not a Default has occurred), but shall not be obligated to: (a) notify any or all account debtors and obligors on instruments constituting Collateral of the existence of the Bank's security interest and to pay or remit all sums due or to become due directly to the Bank or its nominee; (b) place on any chattel paper received as proceeds a notation or legend showing the Bank's security interest; (c) in the name of the Borrower or otherwise, to demand, collect, receive and receipt for, compound, compromise, settle, prosecute and discontinue any suits or proceedings in respect of any or all of the Collateral; (d) take any action which the Bank may deem necessary or desirable in order to realize on the Collateral, including, without limitation, the power to perform any contract, to indorse in the name of Borrower any checks, drafts, notes, or other instruments or documents received in payment of or on account of the Collateral; (e) to place upon Borrower's books and records relating to the accounts and general intangibles covered by the security interest granted hereby a notation or legend stating that such account or general intangible is subject to a security interest held by the Bank, and (f) after any Default, to enter upon and into and take possession of all or such part(s) of the properties of Borrower, including lands, plants, buildings, machinery, equipment and other property as may be necessary or appropriate in the judgment of the Bank to permit or enable the Bank to manufacture, produce, process, store or sell or complete the manufacture, production, processing, storing or sale of all or any part of the Collateral, as the Bank may elect, and to use and operate said properties for said purposes and for such length of time as the Bank may deem necessary or appropriate for said purposes without the payment of any compensation to Borrower therefor.

15. Borrower will collect all accounts until receipt of notice from the Bank to notify all account debtors of the existence of the Bank's security interest and to direct such account debtors to pay or remit all sums due or to become due directly to the Bank or its nominee. Borrower will hold all of the proceeds of such collections and all returned and repossessed goods in trust for the Bank, and will not commingle the same with any other funds or property of the Borrower, and will deliver the same forthwith to the Bank at its request; provided, however, that with respect to returned and repossessed goods Borrower will provide written notice to the Bank of each return or repossession and will on demand pay to the Bank the full invoice or contract price thereof.

16. Borrower will keep accurate books, records and accounts with respect to the Collateral, and with respect to the general business of Borrower, and will make the same available to the Bank at its request for examination and inspection; and will make and render to the Bank such reports, accountings and statements as the Bank from time to time may request with respect to the Collateral; and will permit any authorized representative of the Bank to examine and inspect, during normal business hours, any and all premises where the Collateral is or may be kept or located.

17. The occurrence of any of the following events will constitute a Default: (a) failure of Borrower, or of any co-maker, indorser, surety or guarantor to pay when due any amount payable under any of the Secured Obligations; (b) failure to perform any agreement of Borrower contained herein or in any other agreement with the Bank; (c) any statement, representation or warranty of Borrower made herein or at any time furnished to the Bank is untrue in any respect as of the date made; (d) entry of any judgment against Borrower; (e) Borrower becomes insolvent or is generally not paying its debts as such debts become due; (f) appointment of or assignment to a custodian, as that term is defined in the United States Bankruptcy Code, for any property of Borrower, or loss, substantial damage to, destruction, theft, encumbrance, levy, seizure or attachment of any portion of the Collateral; (g) commencement of any proceeding or filing of a petition by or against Borrower under the provisions of the United States Bankruptcy Code for liquidation, reorganization or adjustment of debts, or under any insolvency law or other statute or law providing for the modification or adjustment of the rights of creditors; (h) death of any Borrower who is a natural person or of any partner of any Borrower which is a partnership if such death causes the termination of the partnership; (i) dissolution, consolidation, or merger, or transfer of a substantial part of the property of any Borrower which is a corporation or a partnership; (j) such a change in the condition or affairs (financial or otherwise) of Borrower or any co-maker, indorser, surety or guarantor of any of the Secured Obligations as in the opinion of the Bank impairs the Bank's security or increases its risk; or (k) the Bank deems itself insecure for any reason whatsoever.

18. Whenever a Default shall exist, the Bank may, at its option and without demand or notice, declare all or any part of the Secured Obligations immediately due and payable, and the Bank may exercise, in addition to the rights and remedies granted hereby, all rights and remedies of a secured party under the Uniform Commercial Code or any other applicable law.

19. Borrower agrees, in the event of Default, to make the Collateral available to the Bank at a place or places to be designated by the Bank, which is reasonably convenient to both parties, and to pay all costs of the Bank, including reasonable attorneys' fees, in the collection of any of the Secured Obligations and the enforcement of any of the Bank's rights. If any notification of intended disposition of any of the Collateral is required by law, such notification shall be deemed properly given if mailed a reasonable time before such disposition, postage prepaid, addressed to the Borrower at the address shown above. Bank's duty of care with respect to Collateral in its possession shall be deemed fulfilled if Bank exercises reasonable care in physically safekeeping such Collateral or, in the case of Collateral in the custody or possession of a bailee or other third person, exercises reasonable care in the selection of the bailee or other third person, and Bank need not otherwise preserve, protect, insure or care for any Collateral. Bank shall not be obligated to preserve any rights Borrower may have against prior parties, to realize on the Collateral at all or in any particular manner or order, or to apply any cash proceeds of Collateral in any particular order of application. No delay or failure by the Bank in the exercise of any right or remedy shall constitute a waiver thereof, and no single or partial exercise by the Bank of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy.

20. If more than one party shall sign this Agreement, the term "Borrower" shall mean all such parties, and each of them and all such parties shall be jointly and severally obligated thereunder.

21. This agreement is governed by the laws of the state in which the Bank is located.

Executed this 2nd day of April, 19 91.

BORROWER(S)

E J RAILROAD, INC. DBA NORTH SHORE SCENIC  
RAILROAD

BY:

Ellen Goldfine

ITS: President/CEO

State of Minnesota

County of St. Louis ss:

On this 2nd day of April 1991 before me personally appeared Ellen J. Goldfine, to me personally known, who being by me duly sworn, say that she is the President/CEO of E J RAILROAD, INC. DBA NORTH SHORE SCENIC RAILROAD, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carol Krzewinski  
Signature of Notary Public

My Commission expires

